

**SUBMISSION ON REGIONAL TRADE AGREEMENTS  
BY AUSTRALIA**

The following communication, dated 8 July 2002, has been received from the Permanent Mission of Australia.

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This communication is a contribution to the elaboration of possible solutions to the problem of interpreting the meaning of "substantially all the trade", a key term in the WTO rules applying to customs unions and free-trade areas. Its clarification would represent an important step in the WTO's consideration of the rules on regionalism in the Doha Round.

**Background**

1. An agreed understanding of the meaning of "substantially all the trade" has so far eluded the WTO Membership. The absence of such an understanding is one of the main reasons why most GATT working parties established to examine regional trade agreements, and more recently the Committee on Regional Trade Agreements (CRTA), have not been able to arrive at a clear-cut decision on their WTO-conformity.
2. GATT Article XXIV:8 defines the meaning of "customs union" and "free-trade area". One characteristic in each case is the requirement that the parties eliminate duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) with respect to substantially all the trade between the constituent territories in products originating in such territories.
3. Starting with the examination of the Treaty of Rome in 1957, some GATT working parties attempted to understand "substantially all the trade" in terms of a percentage of trade covered. Others insisted that an agreement leaving out an entire sector cannot be consistent with the requirements of Article XXIV. An examination of the working party reports reveals the gap in perceptions between delegations on the meaning of this phrase, but it does not greatly advance the search for a solution. This issue has continued to confront the CRTA following the Uruguay Round. It was one of the key issues behind the decision of WTO Ministers in Doha to mandate negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements.
4. The Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 was a helpful step forward. It noted that the contribution to the expansion of world trade through closer integration between the relevant economies is diminished if any major sector of trade is excluded. However, it did not establish any obligations in this regard.

## **A possible solution**

5. Even in ideal circumstances it would be unlikely that more than substantially all the trade is ever subject to the free trade provisions of a regional trade agreement, or that trade in all products would ever occur completely unhindered. GATT Article XXIV:8 makes it quite clear that WTO Members are free, in certain circumstances, to apply the restrictions authorized by a range of GATT articles. Some part of a Member's trade therefore always is potentially subject to restrictive actions. The extent to which this factor would come into play would obviously vary to a considerable extent. It might therefore not be helpful to use actual or potential trade flows as a criterion.

6. At first glance, it might seem advisable to use actual trade statistics and trade flows in an assessment of the extent to which the "substantially all the trade" criterion has been met. There are, however, difficulties associated with this. GATT working parties and subsequently the CRTA have recognized that any calculation of the percentage of trade not freed from barriers would need to take account of the fact that this trade would be, or would have been, larger if the trade had been allowed freely. In other words, simply looking at trade flows does not take account of the dynamics at work before the conclusion of an arrangement, its implementation and the situation prevailing once it has been fully implemented.

7. There is, however, an alternative. Instead of using trade flows, it is possible to take advantage of the classifications used to examine or regulate aspects of these flows. The Harmonized Commodity Description and Coding System would be particularly suitable as the basis for an assessment of whether substantially all trade is covered by an arrangement. It is aimed specifically at internationally traded goods, and it is therefore well understood by the trade policy community.

8. Our proposal is that "substantially all the trade" should be defined in terms of coverage by a free trade agreement, or an agreement establishing a customs union, of a defined percentage of all the six-digit tariff lines listed in the Harmonized System. This approach would ensure that there is sufficient flexibility to set aside product areas that for one reason or another cannot yet be traded between the partners free of restrictions. Proceeding in this way, it would not be necessary to discover the extent to which trade in a given product may have been affected by other measures in place.

9. Australia considers that such a percentage criterion should be established at a sufficiently high level to prevent the carving-out of any major sector, in terms of its near-complete exclusion of coverage. The Secretariat in its background survey on coverage, liberalization process and transitional provisions in RTAs (WT/REG/W/46) has pointed out the tendency for certain sectors, especially agriculture, to be left out of RTAs to a greater or lesser extent, and this has the potential to distort trade in that sector. At the same time, to allow the incorporation of cases where trade is initially concentrated in relatively few products, it may be necessary to include an assessment of prospective trade flows at various stages of implementation of the RTA. Such an approach would bridge the quantitative and qualitative approaches mentioned earlier.

10. Particular attention would have to be given to the definition of what is covered by an agreement. Coverage would have to be understood clearly to mean that there are no tariffs or non-tariff measures in that product affecting the trade of products originating from Members, or that such measures would be eliminated during the agreed implementation timeframe.

11. Australia believes that this type of approach would take us a long way in the direction of finding a workable definition of "substantially all the trade". It has the great advantage of being easily verifiable without requiring complex econometric work.

12. This approach also takes into account the provision made in Article XXIV for interim agreements leading to the formation of free trade areas or customs unions. It would, in practice, only be possible to measure the precise impact of the elimination of duties and other restrictive regulations of commerce under such an interim agreement once the free trade area or customs union was fully implemented. The Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 defined 10 years as the "reasonable period of time" in which such restrictions should be eliminated on substantially all trade. The CRTA would find it difficult to make a precise estimation of the impact of measures to be implemented in 10 years' time. On the other hand, a criterion of "substantially all the trade" based on the number of tariff lines on which restrictions were to be eliminated could just as readily be applied to an assessment of the coverage of measures leading to the formation of a free trade area or customs union over a number of years.

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